

IT 19- 03
Tax Type: Income Tax
Tax Issue: Statute of Limitations Application

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS

v.

JOHN AND JANE DOE
Taxpayers

Docket # [REDACTED]
Acct ID: [REDACTED]
Letter ID: [REDACTED]
Claim for Credit or Refund

RECOMMENDATION FOR DISPOSITION

Appearances: Matthew Crain, Special Assistant Attorney General, for the Department of Revenue of the State of Illinois; John and Jane Doe, *pro se*

Synopsis:

On October 3, 2017, John and Jane Doe (“taxpayers”) filed a Form IL-1040-X, Amended Individual Income Tax Return (“amended return”), for the year 2013 that requested a refund of an overpayment of their taxes. On February 6, 2018, the Department of Revenue (“Department”) issued a Return Correction Notice for the amended return. On February 12, 2018, the taxpayers filed a second amended return for the year 2013, and in response the Department issued another Return Correction Notice. On March 16, 2018, the taxpayers filed a third amended return for the year 2013. On April 9, 2018, the Department issued a Notice of Claim Denial (“Notice”), which denied the taxpayers’ claim

for a refund (amended return) that was filed on March 16, 2018. On April 20, 2018, the taxpayers filed a protest that indicated that it was for the amended return that was filed on October 3, 2017. An evidentiary hearing was held during which the Department argued that the taxpayers' claim for a refund must be denied because the last amended return was not timely filed. The taxpayers argued that the last amended return was merely an amendment to the first amended return that was timely filed on October 3, 2017. After reviewing the record presented by the parties, it is recommended that this matter be resolved in favor of the taxpayers.

FINDINGS OF FACT:

1. On October 3, 2017, the taxpayers filed a Form IL-1040-X, Amended Individual Income Tax Return, for the year 2013 that requested a refund of an overpayment of their taxes.¹ The reason for filing the amended return was to report a subtraction modification allowed for military members who are dual status technicians. (Dept. Ex. #1, p. 19; Recording)
2. On February 6, 2018, the Department issued a Return Correction Notice for the first amended return that included an Explanation on page 3 as follows: "We cannot accept your Form IL-1040-X because this return is not complete. Please send us a completed and signed return with all required attachments." Page 1 of the Return Correction Notice indicates that if the taxpayers disagree with the Department's findings, they must return page 2 within 30 days along with information to correct the return. (Dept. Ex. #1, pp. 11, 16-17; Taxpayer Ex. #1)

¹ The Department provided an internal memorandum (Dept. Ex. #1, p. 19) that indicated that the taxpayers had filed an amended return on October 3, 2017, but neither party provided a copy of this first amended return.

3. After discussing the amended return with a Department employee, on February 12, 2018, the taxpayers filed a second amended return for the year 2013. The reason for filing this return was to correct the numbers relating to the subtraction modification for the dual status technician. (Dept. Ex. #1, pp. 6-8, 13-14; Recording)
4. In response to the second amended return, the Department issued another Return Correction Notice.² (Recording)
5. In response to the oral advice of another Department employee, on March 16, 2018, the taxpayers filed a third amended return for the year 2013.³ The third amended return correctly reported the subtraction modification for the dual status technician and sought a refund in the amount of \$2,594.00. (Dept. Ex. #1, p. 9; Taxpayer Ex. #3, pp. 6-7; Recording)
6. On April 9, 2018, the Department issued a Notice of Claim Denial that denied the taxpayers' claim for refund for the amended return that was filed on March 16, 2018 on the basis that this third amended return was not timely filed. (Dept. Ex. #1, pp. 9-10)
7. On April 20, 2018, the taxpayers filed a protest. The protest alleges that the Department improperly denied the claim for refund that was filed on October 3, 2017 because the taxpayers properly claimed a subtraction for the dual status technician. (Dept. Ex. #1, pp. 3-5)

² The taxpayers' testimony indicated that they received this second Return Correction Notice, but neither party provided a copy of it.

³ The Department's Notice of Claim Denial refers to this third amended return, but neither party provided a copy of this third amended return.

8. The Department agreed that if the taxpayers reported the amounts correctly on the first amended return, the taxpayers would be entitled to the refund of \$ [REDACTED].

(Recording)

CONCLUSIONS OF LAW:

Section 909 of the Illinois Income Tax Act (“Act”) (35 ILCS 5/101 *et seq.*) concerns credits and refunds and provides, in relevant part, as follows:

Sec. 909. Credits and Refunds.

(a) In general. In the case of any overpayment, the Department, within the applicable period of limitations for a claim for refund, may credit the amount of such overpayment, including any interest allowed thereon, against any liability in respect of the tax imposed by this Act, ... and shall refund any balance to such person or credit any balance to that person...

...

(e) Notice of denial. As soon as practicable after a claim for refund is filed, the Department shall examine it and either issue a notice of refund, abatement or credit to the claimant or issue a notice of denial. *If the Department has failed to approve or deny the claim before the expiration of 6 months from the date the claim was filed, the claimant may nevertheless thereafter file with the Department a written protest in such form as the Department may by regulation prescribe*, provided that, on or after July 1, 2013, protests concerning matters that are subject to the jurisdiction of the Illinois Independent Tax Tribunal shall be filed with the Illinois Independent Tax Tribunal and not with the Department. If the protest is subject to the jurisdiction of the Department, the Department shall consider the claim and, if the taxpayer has so requested, shall grant the taxpayer or the taxpayer's authorized representative a hearing within 6 months after the date such request is filed. ...

(f) Effect of denial. A denial of a claim for refund becomes final 60 days after the date of issuance of the notice of such denial except for such amounts denied as to which the claimant has filed a protest with the Department or a petition with the Illinois Independent Tax Tribunal, as provided by Section 910.

...

Emphasis added; 35 ILCS 5/909(a), (e).

The applicable period of limitations for a claim for refund (*i.e.*, amended return) is found in section 911 of the Act, which provides, in relevant part, as follows:

Sec. 911. Limitations on Claims for Refund.

(a) In general. Except as otherwise provided in this Act:

(1) A claim for refund shall be filed not later than 3 years after the date the return was filed ... or one year after the date the tax was paid, whichever is the later; and

(2) No credit or refund shall be allowed or made with respect to the year for which the claim was filed unless such claim is filed within such period.

...

(e) Time return deemed filed. For purposes of this section a tax return filed before the last day prescribed by law for the filing of such return (including any extensions thereof) shall be deemed to have been filed on such last day.⁴

...

35 ILCS 5/911(a)(1), (2); (e).

Under these provisions, because the taxpayers' original return for 2013 is deemed to have been filed on October 15, 2014, the amended return for 2013 should have been filed within 3 years, *i.e.*, by October 15, 2017. The first amended return that the taxpayers filed on October 3, 2017 was, therefore, timely filed.

The taxpayers argue that they timely filed their first amended return on October 3, 2017, and the subsequent amended returns were merely to correct the numbers that were originally reported for the subtraction modification on the first amended return. After the

⁴ Under Section 505(a)(2), the taxpayers' original 2013 individual income tax return was due by April 15, 2014 (35 ILCS 5/505(a)(2)), but one of the Department's regulations grants an automatic extension of 6 months (86 Ill. Admin. Code §100.5020(b)). Therefore, under Section 911(e), the taxpayers' original 2013 return is deemed to have been filed on October 15, 2014.

taxpayers filed their first amended return in October 2017, they received a Return Correction Notice in February 2018. After they filed their second amended return, they received a second Return Correction Notice, and it was not until they filed their third amended return in March 2018 with the correct numbers on it that the Department issued a Notice of Claim Denial that denied the claim that was filed in March 2018 as being untimely.

Based on the documents presented, the taxpayers are entitled to the \$[REDACTED] refund because the protest that the taxpayers filed on April 20, 2018 was for the timely filed amended return. Under section 909(e) of the Act, after a taxpayer files a claim for refund, the Department must examine the return and either approve the claim or deny it. If the Department fails to either approve or deny the claim within 6 months from the date that the claim was filed, the claimant may nevertheless file a protest for that claim. In other words, if the Department fails to either approve or deny a claim, the claim is deemed denied 6 months after the claim was filed, and a taxpayer may protest that denial.

In this case, the Department failed to either approve or deny the claim that was timely filed on October 3, 2017. The Notice of Claim Denial that the Department issued on April 9, 2018 specifically stated that it was for the amended return that was filed on March 16, 2018. The Department never issued a Notice of Claim Denial for the amended return that was filed on October 3, 2017. Instead, the Department issued a Return Correction Notice, which neither approved nor denied the claim as required by section 909(e).

According to section 909(e), because the Department did not approve or deny the amended return that was filed on October 3, 2017, it is deemed denied 6 months later,

which is April 3, 2018. On April 20, 2018, the taxpayers filed a timely protest that specifically indicated that it was for the amended return that was filed on October 3, 2017. Therefore, the timely filed amended return is the return that is at issue in this case.

During the hearing, the Department indicated that there were math errors on the taxpayers' initial amended return, and if the taxpayers reported the amounts correctly on the first amended return, the taxpayers would be entitled to the refund of \$[REDACTED]. The taxpayers, therefore, are entitled to the refund.

Recommendation:

For the foregoing reasons, it is recommended that the taxpayers receive a refund in the amount of \$[REDACTED] for the tax year 2013.

Linda Olivero
Administrative Law Judge

Enter: June 11, 2019